

HOUSE BILL No. 1417

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-8.

Synopsis: Police and firefighter merit systems. Requires all cities, towns, and townships that have full-time paid police or fire departments to use the statutory merit system or establish their own merit system for their police and fire departments not later than July 1, 2006.

Effective: July 1, 2004.

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January 20, 2004, read first time and referred to Committee on Local Government.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1417

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-8-3.5-1, AS AMENDED BY P.L.1-2003,
2 SECTION 100, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) This chapter applies to each
4 municipality ~~or and~~ township that has a full-time paid police or fire
5 department. ~~A Not later than July 1, 2006, each municipality may~~
6 ~~exercise the power of establishing shall establish~~ a merit system for its
7 police ~~or and~~ fire ~~department departments~~ under this chapter or by
8 ordinance adopted under IC 36-1-4-14. ~~A Not later than July 1, 2006,~~
9 ~~each~~ township ~~may exercise the power of establishing shall establish~~
10 a merit system for its fire department under this chapter or by
11 resolution under IC 36-1-4-14. This chapter does not affect merit
12 systems established:

- 13 (1) by ordinance under IC 36-1-4-14, except as provided by
14 subsection (e);
15 (2) by resolution under IC 36-1-4-14, except as provided by
16 subsection (f); or
17 (3) by a prior statute, except as provided by subsection (b).

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(b) If a city had a merit system for its police or fire department under the former IC 18-4-12, IC 19-1-7, IC 19-1-14, IC 19-1-14.2, IC 19-1-14.3, IC 19-1-14.5, IC 19-1-20, IC 19-1-21, IC 19-1-29, IC 19-1-29.5, IC 19-1-31, IC 19-1-31.5, or IC 19-1-37.5, it may retain that system by ordinance of the city legislative body passed before January 1, 1983. The ordinance must initially incorporate all the provisions of the prior statute but may be amended by the legislative body after December 31, 1984. The ordinance retaining the system must be amended, if necessary, to include a provision under which the commission (or governing board of the merit system) has at least one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must:

- (1) be a person of good moral character; and
- (2) except for a member of a fire department having a merit system established under IC 19-1-37.5, not be an active member of a police or fire department or agency.

(c) After December 31, 1984, the legislative body also may repeal the ordinance described in subsection (b), but the legislative body shall in the repealing ordinance concurrently establish a new merit system under section 3 of this chapter. (This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend the ordinance under subsection (b).) After the new merit system takes effect, all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(d) If a city had a merit system for its police or fire department under a prior statute but fails to retain that system under subsection (b), the city legislative body shall, before July 1, 1983, pass an ordinance to establish a new merit system under section 3 of this chapter. If the new merit system is approved as provided by section 4 of this chapter, it takes effect as provided by that section. However, if the new merit system is rejected under section 4 of this chapter, within thirty (30) days the city legislative body shall adopt an ordinance to retain the prior merit system. The prior merit system remains in effect until the new merit system takes effect, after which time all members of the department are entitled to the same ranks and pay grades the members held under the prior system, subject to changes made in accordance with this chapter.

(e) An ordinance adopted under IC 36-1-4-14 to establish a police or fire merit system must include a provision under which the commission, or governing board of the merit system, has at least

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one-third (1/3) of its members elected by the active members of the department as prescribed by section 8 of this chapter. Each elected commission member must be a person of good moral character who is not an active member of a police or fire department or agency. If an ordinance was adopted under IC 36-1-4-14 before July 1, 1988, the ordinance must be amended to include this requirement.

(f) This chapter does not prevent a township or other unit that has adopted a merit system under section 3 of this chapter from later amending or deleting any provisions of the merit system contained in this chapter. However, the merit system must include a provision under which the commission has at least one-third (1/3) of its members elected by the active members of the department, as set forth in section 8 of this chapter and a provision that incorporates the requirements of section 6(a) of this chapter. This subsection does not require the legislative body to establish a new merit system when it exercises its power to amend under this subsection.

SECTION 2. IC 36-8-3.5-3, AS AMENDED BY P.L.180-2002, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) ~~The legislative body of a unit (other than a township) may, by ordinance, establish a merit system under this chapter for the police or fire department of the unit. The legislative body of a township may, by resolution, establish a merit system under this chapter for the township's fire department. Before the merit system takes effect, however, After the legislative body of a unit adopts an ordinance or resolution establishing a merit system under this chapter,~~ the system must be approved by a majority of the active members of the department in a referendum **before the ordinance or resolution takes effect.**

(b) The legislative body shall specify in the adopting ordinance or resolution which of the provisions of this chapter that are left to its discretion are being adopted.

(c) If a merit system is established under this chapter for each department of a unit, each department has a separate merit system.

SECTION 3. IC 36-8-3.5-5, AS AMENDED BY P.L.180-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) **If a unit has a merit system that was not established under this chapter,** a majority of the active members of the department, by referendum under section 4 of this chapter, may request the unit's legislative body to establish a merit system for the department **under the provisions of this chapter.** The legislative body shall vote on the request within sixty (60) days after it is filed with the clerk of the legislative body of a county or a municipality or the

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executive of a township.

(b) If the legislative body votes to grant the request, the legislative body shall adopt an ordinance or resolution establishing a merit system under this chapter. A copy of the ordinance or resolution shall be distributed to each active member of the department, and another referendum under section 4 of this chapter is required before the merit system takes effect.

(c) If the legislative body votes to deny the request, the request may not be resubmitted to the legislative body for one (1) year. Before the request may be resubmitted, another referendum under section 4 of this chapter must be held.

SECTION 4. IC 36-8-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) This section applies **only before July 1, 2006**, to:

(1) police departments in second and third class cities having a population of ten thousand (10,000) or more; and

(2) fire departments in second and third class cities;

that ~~are not governed by~~ **have not adopted** a merit system prescribed by statute or ordinance.

(b) Promotion of police officers or firefighters must be from the active personnel of the department.

(c) A person appointed fire chief must have had at least five (5) years of continuous service with the department immediately before his appointment. However, this requirement may be waived by a majority vote of the city legislative body upon request of the city executive, although the person must still have at least five (5) years service with a full-time, paid fire department or agency.

(d) A person appointed to a rank other than police or fire chief or deputy police chief must have had at least two (2) years of continuous service with the department immediately before his appointment.

SECTION 5. IC 36-8-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If, in the judgment of the executive, overtime work by the regular police officers or firefighters under section 4 of this chapter does not meet the requirements for public safety in the municipality, the safety board and the police and fire chiefs may employ persons temporarily. However, ~~if there is an established~~ **when a unit establishes a merit system, the unit shall use** eligibility lists for appointment or promotion in effect ~~must be used~~ in the selection of personnel before other temporary or permanent appointments. These persons shall be employed as temporary employees and are not members or beneficiaries of any pension fund under this article. All temporary employees' service terminates at the

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- 1 expiration of the emergency.
- 2 (b) Temporary employees and overtime work shall be paid out of the
- 3 unexpended appropriations for salaries of those on temporary leave of
- 4 absence under section 3 of this chapter.

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